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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 345 of 2000

in

SPECIAL CIVIL APPLICATION No 8378 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PANDYA MAYUR PRAHLADBHAI

Versus

JAMNAGAR MUNICIPAL CORPORATION

Appearance:

Mr.H.H. Joshi for MR VH DESAI for Appellant
MR JR NANAVALI for the Respondent.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/03/2001

1. The appellant, who is the son of a deceased employee of the Jamnagar Municipal Corporation, by this Appeal claims direction against the Corporation for consideration of his case for compassionate appointment.

2. Facts not in dispute are that the father of appellant was serving in the Tax Department of the Corporation. There was some criminal case instituted against him and he was acquitted by the criminal court. Against acquittal, an appeal was preferred before the High court, but during the pendency of the appeal, the father of the appellant died. Therafter, the appellant made an application for compassionate appointment. By the impugned communication dated 30.8.1989 (Annexure 'D' annexed with Special Civil Application No.8378 of 1999), the claim of the appellant for compassionate appointment has been rejected on the sole ground that the mother of the appellant Prabhutaben Pandya was involved in a criminal case under Section 302, IPC.

3. Before the learned single Judge, it was contended that the rejection of his claim for compassionate appointment on the above ground is contrary to the Rules regulating consideration of claims for compassionate appointment. The learned single Judge, however, without assigning any reasons, summarily dismissed the Special Civil Application by order passed on 28.1.2000, against which this Letters Patent Appeal has been filed.

4. Learned Counsel Shri H.H. Joshi, appearing for the appellant, submits that criminal antecedents, if any, of the mother should not come in the way of the appellant's claim for compassionate appointment in accordance with the Rules. We have also heard learned counsel Shri J.R. Nanavati, appearing for the respondent, who has made some effort to uphold the action of the Corporation. It is submitted that the antecedents, both of the deceased father of the appellant and mother, were not good and it was, therefore, a valid ground to refuse compassionate appointment.

5. After hearing the learned counsel for the parties, in our opinion, the appellant's claim for compassionate appointment has been turned down on extraneous grounds. The appellant's father was prosecuted for the criminal charge of misappropriation, but he was acquitted by the criminal court. The appeal preferred against acquittal became infructuous because

during the pendency of the appeal the father died. The antecedents of the father, therefore, cannot be held to be bad. So far as the antecedents of the mother of the appellant are concerned, that is also a matter sub judice before a criminal court. At the time of making application for compassionate appointment, it could not be held that the appellant has a criminal background. Assuming that the mother of the appellant is involved in a criminal case, that should not be taken as a disqualification for her son to claim compassionate appointment. The grounds on which the claim of the appellant for compassionate appointment has been resisted are not sustainable under the Rules regulating consideration of claims for compassionate appointment. It is unfair to disqualify the son for alleged sins of his parents.

6. For the aforesaid reasons, order of the learned single Judge dated 28.1.2000 is set aside. The appeal partly succeeds with directions to the Municipal Corporation to consider the appellant's case for compassionate appointment on its own merits in accordance with the Rules regulating compassionate appointment and regardless of the fact of the alleged criminal antecedents of his parents. The necessary order, after considering his claim for compassionate appointment, be passed within a period of two months from today.

Appeal is allowed to the aforesaid extent. No costs.

8th March, 2001 (D.M. Dharmadhikari, C.J.)

(P.B. Majmudar, J.)

(apj)